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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

Sixth session
Geneva, 2–5 June 2014
Item 11 (a) of the provisional agenda
Adoption of decisions: decisions to be taken by the Meeting of the Parties to the Convention

Draft decision on the review of compliance with the Convention

Proposal by the Implementation Committee

Summary

The present draft decision was finalized by the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context at its thirtieth session (Geneva, 25–27 February 2014), having taken into account suggestions made by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment during and after its third meeting (Geneva, 11–15 November 2013).

Section III, paragraphs 52 to 63, contains the Committee's recommendations further to the submission by Lithuania expressing concerns about compliance by Belarus with its obligations under the Convention with respect to the planned building of a nuclear power plant in Ostrovets, as finalized by the Committee at its twenty-seventh session (Geneva, 12–14 March 2013). In the light of the steps taken since then by the Parties concerned, Belarus and Lithuania, the Committee supplemented its recommendations at its thirtieth session (Geneva, 25–27 February 2014). These recommendations are included in paragraphs 64 to 67 of the draft decision (see also report on the activities of the Implementation Committee, ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4).

The Meeting of the Parties is expected to review the draft decision and agree on its adoption.

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Draft decision VI/2

[*to be considered by the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context at its sixth session*]

Review of compliance

The Meeting of the Parties to the Convention,

Recalling article 11, paragraph 2, of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), and decisions III/2, IV/2 and V/4 of the Meeting of the Parties to the Convention on the review of compliance,

Recalling further article 14 bis of the second amendment to the Convention,

Determined to promote and improve compliance with the Convention,

Seeking to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

Having considered the analysis made by the Implementation Committee on general compliance issues in the Third Review of Implementation of the Convention, as presented in document ECE/MP.EIA/16,

Having also considered the findings and recommendations of the Committee on three submissions made to the Committee in accordance with paragraph 5 (a) in the appendix to decision III/2[1] and on two Committee initiatives further to paragraph 6 of the appendix to decision III/2, as set out in the reports of the Committee on its twenty-sixth, twenty-seventh, twenty-eighth, and thirtieth sessions,[2]

Having reviewed the structure and functions of the Committee, as described in the appendix to decision III/2,[3] and considering that it is necessary to ensure continuity of the Committee's work during each intersessional period,

Having also reviewed the operating rules adopted in decision IV/2,[4] as amended by decision V/4,[5] and recognizing the importance of improving the effectiveness of the compliance mechanism under the Convention,

Having further reviewed the opinions of the Committee,

Recognizing the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the Fourth Review of Implementation of the Convention[6] based on Parties' answers to the questionnaires on the implementation of the Convention adopted in decision VI/1,

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[1] ECE/MP.EIA/6, annex II.

[2] ECE/MP.EIA/IC/2012/6, annexes I and II; ECE/MP.EIA/IC/2013/2, annex; ECE/MP.EIA/IC/2013/4, annex; and ECE.MP.EIA/IC/2014/2, annex (forthcoming).

[3] ECE/MP.EIA/6, annex II.

[4] ECE/MP.EIA/10, annex IV.

[5] ECE/MP.EIA/15, annex.

[6] ECE/MP.EIA/2014/3.

Recalling that the compliance procedure is assistance-oriented and that Parties may make submissions to the Committee on issues regarding their compliance with the Convention,

I. General part

1. *Adopts* the Committee's report on its activities contained in document ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4, welcomes the reports of the meetings of the Committee in the period after the fifth session of the Meeting of the Parties to the Convention, and requests the Committee:

(a) To keep the implementation and application of the Convention under review;

(b) To promote and support compliance with the Convention, including by providing assistance in this respect, as necessary;

2. *Welcomes* the examination by the Committee of specific compliance issues identified in the Third Review of Implementation adopted in decision V/1, regarding Albania, Croatia, Portugal and the Republic of Moldova, which in the case of Croatia, Portugal and the Republic of Moldova resulted in the Committee declaring its satisfaction with the clarifications provided by Parties, and in case of Albania led to a Committee initiative;

3. *Welcomes also* the examination by the Committee of information received from other sources, including the public, regarding Azerbaijan, Belarus, Lithuania, Romania and the United Kingdom of Great Britain and Northern Ireland, and three times regarding Ukraine, which in the case of Belarus was superseded by a submission initiated by Lithuania; in the case of Romania was considered within the Committee's mandate to review compliance with the Protocol; in the case of Azerbaijan and Lithuania resulted in the Committee declaring its satisfaction with the clarifications provided by Parties; and in the case of the United Kingdom and Ukraine led to Committee initiatives;

4. *Notes* the information received from other sources for two cases regarding Ukraine that are to be considered by the Committee at its forthcoming sessions;

5. *Considers also*, following the opinions of the Committee, that:

(a) The obligation in article 3 of the Convention to notify potentially affected Parties rests solely with the Party of origin.[7] The secretariat having exceptionally acted as an intermediary does not release a Party from its obligations under the Convention.[8] Article 13 of the Convention cannot be interpreted as providing an obligation on the secretariat to act as an intermediary in the procedures set out in the Convention;[9]

(b) If, under exceptional circumstances, the Party of origin seeks the assistance of an intermediary in fulfilling its obligations to notify potentially affected Parties, it retains responsibility for any actions or omissions of the intermediary in the process of notification;[10]

(c) When a Party of origin entrusts the notification procedure to an intermediary, the fulfilment of the conditions set out in article 3, paragraph 3, is to be established from the

[7] ECE/MP.EIA/IC/2012/2, para. 17, and ECE/MP.EIA/IC/2012/6, annex I, para. 38.
[8] ECE/MP.EIA/IC/2012/6, annex I, para. 37 (a).
[9] Ibid., para. 38.
[10] Ibid., para. 37 (d) and ECE/MP.EIA/IC/2012/2, para. 17.

correspondence between the affected Parties and the intermediary, unless otherwise agreed upon between the Parties concerned and the intermediary;[11]

(d) Any miscommunications between the Party of origin and the intermediary should have no impact on the application of the provisions of the Convention;[12]

(e) Neither the Convention itself nor the applicable international rules provide for an exception, and therefore absence of diplomatic relations cannot be considered legitimate reason for not applying the Convention;[13]

(f) The extension of the lifetime of a nuclear power plant, after expiration of the original licence, even in the absence of any works, is to be considered as a major change to an activity and consequently subject to the provisions of the Convention;[14]

(g) E-mail is a widely used, commonly acceptable and rapid means of communication and information exchange, including in public international relations, and the legal validity of electronic means of communication for the purposes of notifying is acknowledged;[15]

(h) A Party that responds by electronic means to a notification within the time specified for response has fulfilled its obligation under article 3, paragraph 3, as regards the timeliness of the response;[16]

(i) The procedure in article 3, paragraph 7, does not substitute for the obligations of a Party of origin deriving from the Convention to notify possibly affected Parties, or to fulfil any other step of the transboundary EIA procedure in compliance with the Convention in case transboundary environmental impacts cannot be excluded;[17]

(j) The affected Party must clearly express its will to participate in the transboundary environmental assessment procedure. In addition, the affected Party may or may not express an opinion on the substance or the merits of the proposed activity which was the subject of the Party of origin's notification, without this causing prejudice to the future exchanges and consultation between the two Parties;[18]

(k) Although the Convention does not specify mechanisms for public participation, the holding of public hearings is an essential step in the effective public participation provided for in article 2, paragraph 6, and article 3, paragraph 8, of the Convention as set out in the Guidance on public participation;[19]

(l) As such, a website could be one of the useful means to allow for the public of the Parties concerned to participate in a transboundary EIA procedure, if they so agree, provided that the information is complete, provided in time and, for the relevant parts of the EIA documentation, in the language of the affected Party, and that the public is given a possibility to comment on the website;[20]

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[11] ECE/MP.EIA/IC/2012/6, annex I, paras. 37 (b) and 38.
[12] Ibid., para. 37 (c).
[13] Ibid., para. 46.
[14] See ECE/MP.EIA/IC/2014/2, annex (forthcoming); see also ECE/MP.EIA/IC/2013/2, para. 21 and ECE/MP.EIA/IC/2011/8, para. 43.
[15] ECE/MP.EIA/IC/2012/6, annex I, para. 33.
[16] Ibid.
[17] See ECE/MP.EIA/IC/2014/2, annex (forthcoming).
[18] ECE/MP.EIA/IC/2012/6, annex I, para. 34.
[19] ECE/MP.EIA/IC/2013/2, annex, para. 44.
[20] Ibid., para. 48.

(m) The participation of representatives of some non-governmental organizations in the meetings of the board of a nuclear regulatory authority does not amount to public participation in the areas likely to be affected in the meaning of article 2, paragraph 6, of the Convention;[21]

(n) If an EIA procedure were to be necessary only for the construction or demolition of physical parameters, such as buildings, of a nuclear power plant and not for the modernization and replacement of technical components for safety reasons, Parties would be able to continuously modernize and thus extend the lifetime for all existing nuclear installations, without ever carrying out an EIA procedure in accordance with the Convention;[22]

(o) The EIA documentation must evaluate and justify the different elements to be taken into account for the reasonable locational alternatives required in accordance with appendix II to the Convention;[23]

(p) The choice of the location of the proposed activity should result from the EIA procedure and should not be determined before the final EIA report is issued, unless the choice of the location is determined in an appropriate strategic environmental assessment procedure that included a transboundary procedure;[24]

(q) In accordance with article 5 of the Convention, consultations should not be only a mere formality but should concern the measures to "reduce or eliminate" (art. 5, para. 1) the potential transboundary impact of the proposed activity and allow thorough examination of its possible alternatives;[25]

(r) In order to allow for meaningful consultations under article 5, the information provided by the Party of origin should be as complete and precise as possible and, in particular, should meet any reasonable request as to its scope made by the affected Party;[26]

6. *Reiterates its recommendation that*, pending the entry into force of the second amendment to the Convention as adopted by decision III/7, Parties in their role of Party of origin:

(a) Notify as early as possible and when determining case by case the content of EIA documentation ("scoping"), where applicable, so that the EIA documentation can meet the needs of the affected Party;

(b) Involve the affected Party in any such case-by-case determination (see decision V/4, para. 7);

7. *Also reiterates* its recommendation that even a low likelihood of a significant adverse transboundary impact should trigger the obligation to notify affected Parties (see decision III/4, annex IV, para. 28), and that notification is necessary unless a significant transboundary impact can be excluded (see decision IV/2, annex I, para. 54);

8. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

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[21] See ECE/MP.EIA/IC/2014/2, annex (forthcoming).
[22] Ibid.
[23] ECE/MP.EIA/IC/2013/2, annex, para. 54.
[24] Ibid.
[25] Ibid., para. 51.
[26] Ibid., para. 52.

9. *Requests* the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to decision VI/3 of the sixth session of the Meeting of the Parties on the adoption of the workplan;

10. *Urges* Parties to take into account in their further work the recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based on but not limited to the analyses on general compliance issues:

(a) From the First Review of Implementation, adopted by decision III/1, the Second Review of Implementation adopted by decision IV/1 and the Third Review of Implementation adopted by decision V/3 of the Meeting of the Parties to the Convention;

(b) As presented in chapter III of the Committee's previous report on its activities;[27]

(c) As presented in chapter III of the Committee's latest report on its activities;[28]

11. *Also urges* Parties to take into account in their further work the opinions of the Committee in the period from 2001 to 2014, and requests the secretariat to arrange for the revision of the publication of these opinions to include the Committee's opinions from 2011–2014;

12. *Adopts* the amendments to the structure and functions of the Committee, set out in the annex I to this decision, and requests the secretariat to arrange publication of the amended structure and functions in electronic format;

13. *Adopts* the amendments to the operating rules of the Committee set out in the annex II to this decision, which should be applied to any meeting and to the conduct of any other business of the Committee and should be read together with and in furtherance of the structure, functions and procedures described in the appendix to decision III/2 of the Meeting of the Parties to the Convention, as amended by decision V/4 and the present decision (annex I), as well as decision V/6–I/6 of the of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, and requests the secretariat to arrange publication of the amended operating rules in electronic or paper format, as appropriate;

14. *Decides* to keep under review and to develop if necessary the structure and functions of the Committee as well as its operating rules at the seventh session of the Meeting of the Parties in the light of experience gained by the Committee in the interim, and requests the Committee to prepare any proposals, as it deems necessary, for the seventh session of the Meeting of the Parties;

II. Follow-up to decision V/4

A. Regarding Ukraine

15. *Welcomes* the efforts demonstrated by the Government of Ukraine to follow the recommendations by the Meeting of the Parties in decision V/4;

16. *Appreciates* the timely reports received from the Government of Ukraine further to paragraph 24 of decision V/4;

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[27] ECE/MP.EIA/2011/4.

[28] ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4.

17. *Welcomes* the preparation by the Government of Ukraine of a new draft law on the implementation of the Convention, as a concrete legislative measure for the implementation of the strategy of the Government of Ukraine to implement the Convention;

18. *Expresses deep concern*, however, that the strategy has not been fully implemented, and in particular that the respective legislative measures for the implementation of the Convention have not yet been adopted;

19. *Appreciates* that monitoring measures have been put in place with regard to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (the Project);

20. *Regrets*, however, that no steps have been taken to bring the Project into full compliance with the Convention, implementing the measures in accordance with paragraph 19 of decision V/4;

21. *Endorses* therefore the finding of the Implementation Committee at its thirtieth session that, despite some steps taken, Ukraine has not yet fulfilled all its obligations under paragraph 24 of decision V/4;

22. *Endorses* also the finding of the Committee that the recent decisions by the Government of Ukraine to continue dredging activities, such as the Action Plan adopted by decision No. 187 of 27 July 2013, may indicate a further breach of its obligations under the Convention;

23. *Declares* therefore that the caution to the Government of Ukraine issued at its fourth session is still effective;[29]

24. *Requests* the Government of Ukraine to adopt the relevant draft legislation and to bring the Project into full compliance with the Convention by the end of 2015;

25. *Also requests* the Government of Ukraine to report by the end of each year to the Committee on how it implemented paragraph 24 above, and specifically:

(a) On the implementation of the strategy by the end of 2015, in particular concrete legislative measures adopted to this effect, and to provide to the Committee relevant draft legislation for its review before it is adopted;

(b) On steps taken to bring the Project into full compliance, implementing the measures in accordance with paragraph 19 of decision V/4, by the end of 2015, while refraining from any measure or programme which could jeopardize the fulfilment of these recommendations;

26. *Further requests* the Government of Ukraine to inform Romania about existing monitoring results and to consult with Romania on the post-project analysis, according to article 7 of the Convention, as well as also to report to the Committee, eight months before the seventh session of the Meeting of the Parties, on the implementation of article 7 of the Convention;

27. *Encourages* the Governments of Ukraine and Romania to further develop the bilateral agreement for improved implementation of the Convention;

28. *Requests* the Committee to report to the Meeting of the Parties to the Convention at its seventh session on its evaluation of the steps taken by the Government of Ukraine to bring about compliance and to implement the strategy, and to develop, if

[29] ECE/MP.EIA/IC/2009/4, para. 16.

appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention;

B. Regarding Armenia

29. *Welcomes* the progress made by the Government of Armenia towards adoption of the draft revised legislation, prepared in the previous intersessional period with the assistance of the Implementation Committee and the Convention secretariat, for the implementation of the Convention in accordance with the Committee's findings (decision V/4, paras. 27–28);

30. *Appreciates* the reports received from the Government of Armenia during the intersessional period;

31. *Invites* the Government of Armenia to adopt the revised draft law as soon as possible while ensuring that:

(a) The legislation adopted is in compliance with the Convention and the Protocol on SEA;

(b) Since Armenia is also a Party to the Convention on Access to Information Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), that the public participation procedures at the national level are in line with the minimum requirements set out in article 6 of the Aarhus Convention, so as to provide for proper public participation procedures in a transboundary context under the Espoo Convention;

32. *Requests* the Government of Armenia to ensure that the adopted legislation is in concordance with the recommendations of the international consultant to the secretariat;

33. *Also requests* the Government of Armenia to regularly report to the Committee on the progress made;

34. *Further requests* the Committee to report to the Meeting of the Parties at its seventh session on the Committee's evaluation of the legislation adopted by Armenia for the implementation of the Convention;

35. *Invites* the secretariat to offer technical advice to the Government of Armenia to assist it in bringing its draft legislation fully in line with the provisions of the Convention, as well as with the provisions of the Protocol before its adoption;

C. Regarding Romania

36. *Welcomes* the reports received from the Governments of Romania and Ukraine further to paragraph 30 of decision V/4;

37. *Encourage* the Governments of Romania and Ukraine to strengthen their cooperation in preparing a bilateral agreement or other arrangement to support further the provisions of the Convention, as set out in article 8 of the Convention, further to paragraph 14 of decision IV/2 and paragraph 30 of decision V/4;

D. Regarding Azerbaijan

38. *Welcomes* the preparation by the Government of Azerbaijan, with the technical assistance provided by a consultant to the Convention secretariat, of draft legislation for the implementation of the Convention, noting that the draft legislation includes also provisions on strategic environmental assessment;

39. *Appreciates* the reports received from the Government of Azerbaijan on progress in implementing the recommendations by the consultant for further strengthening Azerbaijan's capacity to comply fully with its obligations under the Convention;

40. *Takes note* of the fact that the draft legislation presented to the Committee during the intersessional period (September 2013) has in the meantime been amended, specifically with regard to the public participation procedures, the annexes and the regulation of strategic environmental assessment matters;

41. *Requests* Azerbaijan to ensure that the draft framework law on environmental assessment, as well as the subsequent implementing regulations to be adopted, comply with the Convention, taking into account the recommendations of the international consultant to the secretariat, and also the draft general guidance on enhancing consistency between the Convention and the environmental impact assessment in the framework of the State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, adopted through decision VI/8;[30]

42. *Requests* the Government of Azerbaijan to adopt the draft law and the subsequent implementing regulations, as well as to regularly report to the Committee on the progress made;

43. *Also requests* the Committee to report to the Meeting of the Parties to the Convention at its seventh session on its evaluation of the legislation adopted in accordance with the Convention;

44. *Invites* the secretariat to offer technical advice to the Government of Armenia to assist it in bringing its draft legislation fully in line with the provisions of the Convention, as well as with the provisions of the Protocol before its adoption;

III. Submissions by Parties

A. Regarding Armenia[31]

45. *Endorses* the finding of the Committee that Armenia was in non-compliance with its obligation under the article 3, paragraph 1, of the Convention to notify Azerbaijan as early as possible and no later than when informing its own public, with respect to the construction of the nuclear power plant in Metsamor referred to in the submission by Azerbaijan regarding Armenia of 5 May 2011;

46. *Endorses* the finding of the Committee that Armenia is not in non-compliance with article 3, paragraphs 5 and 8, article 4, paragraph 2, article 5 and article 6 of the Convention, considering that — to the extent that the final decision on the construction of the nuclear power plant had not yet been taken and the works had not yet been initiated — there was still a possibility for Armenia to continue the implementation of the subsequent steps in the transboundary EIA procedure;

47. *Encourages* both Parties to find practical ways to fully implement the provisions of the Convention, in view of the willingness of the Governments of Armenia and Azerbaijan to continue doing so and the presence of the exceptional circumstances;

48. *Also encourages* both Armenia and Azerbaijan to explore ways to support their implementation of the Convention, such as the possible designation of an intermediary and the use of new technologies and innovative approaches for communication;

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[30] ECE/MP.EIA/2014/2.

[31] ECE/MP.EIA/IC/2012/6, annex I, paragraph 51.

B. Regarding Azerbaijan[32]

49. *Endorses* the findings of the Committee that, in accordance with the information provided to the Committee, Azerbaijan was not in non-compliance with its obligations under article 2, paragraph 4, article 3 paragraphs 1 and 8, article 5, and article 6, paragraph 1, of the Convention, with respect to the following projects:

(a) The Joint Development and Production Sharing for the Azeri and Chirag Oil and Gas Fields in the Deep Water Portion of the Gunashli Oil and Gas Field in the Azerbaijan Sector of the Caspian Sea, including the Sangachal terminal project;

(b) The Exploration, Development and Production Sharing for the Shah Deniz Prospective Area in the Azerbaijan Sector of the Caspian Sea, including the expansion of the Sangachal terminal project;

(c) The Baku-Novorossiysk pipeline — North Route Export Pipeline;

(d) The Transportation of Petroleum via the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey through the Baku-Tbilisi-Ceyhan Main Export Pipeline Project;

(e) The Baku-Tbilisi-Erzurum Gas Pipeline — South Caspian Pipeline;

50. *Encourages* Azerbaijan to continue monitoring and submitting monitoring reports to Armenia with a view to taking all appropriate and effective measures to control any significant adverse transboundary impact from the activities mentioned in Armenia's submission, in accordance with article 2, paragraph 1, of the Convention.

51. *Encourages* Azerbaijan to continue improving the legal, administrative and other measures to reach full compliance with the Convention, in line with the recommendations made under the Committee initiative on Azerbaijan,[33] including clearly designating in its legislation what decision constitutes a final decision and ensuring that this decision complies with the requirements of article 6 of the Convention;

C. Regarding Belarus[34]

52. *Endorses* the finding of the Committee that, following the recent legislative changes in Belarus, Belarus has improved its legal framework on EIA and that there were no grounds for finding non-compliance with article 2, paragraph 2, of the Convention;

53. *Endorses* the findings of the Committee that, on 14 March 2013, the date of the adoption by the Committee of its report on its twenty-seventh session, including the findings as an annex to the report, Belarus was in compliance with its obligations under article 3, paragraph 2 (a) and (c), and article 3, paragraph 8, of the Convention in relation to the activities referred to in the submission by Lithuania regarding Belarus on 16 June 2011;

54. *Endorses* the findings of the Committee that Belarus on 14 March 2013 was in non-compliance with its obligations under article 2, paragraph 6, article 4, paragraph 2, article 5, paragraph (a), and article 6, paragraphs 1 and 2, of the Convention in relation to the activities referred to in the submission;

55. *Requests* the Government of Belarus to take a final decision on the site selection, in full compliance with the requirements of article 6, i.e., ensuring that due account has been taken of the outcome of the EIA documentation, and the comments

[32] ECE/MP.EIA/IC/2013/4, annex, paragraph 78.
[33] ECE/MP.EIA/IC/2009/4, paragraph 32.
[34] ECE/MP.EIA/IC/2013/2, annex, paragraph 74; and ECE/MP.EIA/2014/4–ECE/MP.EIA/SEA/2014/4.

thereon received pursuant to article 3, paragraph 8, and article 4, paragraph 2, as well as the outcome of the consultations referred to in article 5;

56. *Also requests* Belarus to provide to Lithuania the final decision on the proposed activity taken in accordance with the previous recommendation, along with the reasons and considerations on which it was based;

57. *Further requests* Belarus to continue the procedure of transboundary EIA on the basis of the final EIA documentation. To this end, and in accordance with the provisions of the Convention, Belarus should agree with Lithuania on the steps to be followed, answer all Lithuania's questions, and take into consideration the Lithuanian comments;

58. *Urges* Belarus and Lithuania to make further efforts to ensure that the language requirements of public consultations are satisfied;

59. *Requests* Belarus and Lithuania to ensure that the Lithuanian public is informed about the final EIA report and provided with possibilities for making comments or objections to it, in line with article 3, paragraph 8, of the Convention;

60. *Encourages* Belarus and Lithuania to continue consultations, on the basis of article 5, and urges Parties to agree on a reasonable time frame for the consultation period;

61. *Also encourages* Belarus and Lithuania to agree on a post-project analysis in accordance with article 7 of the Convention;

62. *Further encourages* Belarus and Lithuania to conclude the bilateral agreement for the implementation of the Convention in accordance with article 8;

63. *Requests* Belarus and Lithuania to report by the end of each year to the Committee on the implementation of these recommendations;

64. *Welcomes* the steps taken by both Parties, especially by Belarus, since the Committee's twenty-seventh session, in following the Committee's recommendations to the Meeting of the Parties, and notes that these steps, as detailed in the Committee's report on its activities to the Meeting of the Parties, have the potential to address the findings of non-compliance;

65. *Regrets* that Belarus and Lithuania were not able to agree on the steps undertaken within the transboundary procedures after 14 March 2013;

66. *Invites* Lithuania and Belarus to improve their communication and cooperation for the implementation of the Convention, inter alia, by establishing a permanent joint body on post-project analysis according to article 7 and any other relevant issue concerning the Ostrovets nuclear power plant;

67. *Requests* the Implementation Committee to thoroughly analyse the steps undertaken after the adoption of the Committee's report on its twenty-seventh session and to reflect the conclusions of its analysis in the report of the Committee's thirty-second session at the latest, and to report to the Meeting of the Parties at its seventh session on the matter;

IV. Committee initiative

A. *Regarding Albania*[35]

68. *Endorses* the finding of the Committee that Albania is not in non-compliance with the Convention in relation to its obligation to report on its implementation of the Convention;

69. *Encourages* Albania to create the necessary institutional framework to ensure the proper implementation of the requirement to report on its implementation and to report to the Committee;

70. *Welcomes* the efforts undertaken by Albania during the intersessional period to implement the Committee's recommendations and notes with appreciation the timely reporting by Albania on its implementation of the Convention in the period 2010–2012;

B. *Regarding Ukraine*[36]

71. *Endorses* the findings of the Implementation Committee that the extension of the lifetime of a nuclear power plant, after the initial/previous licence/permit has expired, is to be considered as a proposed activity under article 1, paragraph (v), of the Convention, and is consequently subject to the provisions of the Convention;

72. *Endorses* the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraph 2, with respect to the general legal and administrative framework applicable in the decision-making for the extension of the lifetime for nuclear reactors;

73. *Endorses* the findings of the Implementation Committee that Ukraine is in non-compliance with its obligations under article 2, paragraphs 2 and 3, article 4, paragraph 1, and articles 3 and 6 with respect to the extension of lifetime for reactors 1 and 2 of the Rivne nuclear power plant;

74. *Requests* Ukraine to amend its legislation to provide for the application of the Convention in similar cases of the lifetime extension for nuclear installations;

75. *Invites* Ukraine to notify potentially affected Parties, taking into account that potential impacts extend not only to neighbouring countries, but may also be long-range,[37] about the extension of the lifetime of reactors 1 and 2 of the Rivne nuclear power plant, as required under the Convention, in due time and before the next periodic safety review due in 2020, and to undertake all subsequent steps, as appropriate, in line with the Convention;

76. *Urges* Ukraine to carry out an EIA that would permit public participation and preparation of EIA documentation described in appendix II to the Convention;

77. *Invites* Ukraine to report to the Committee on the measures taken to bring about compliance of the project with the Convention.

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[35] ECE/MP.EIA/IC/2012/6, annex II, paragraph 31.
[36] ECE/MP.EIA/IC/2014/2, annex (forthcoming).
[37] Cf. MP.EIA/WG.1/2003/3, para. 8.

Annex I

Amendments to the structure and functions of the Implementation Committee and procedures for review of compliance (decision III/2, appendix)

1. Replace paragraph 1 (a) of the structure and functions of the Implementation Committee and procedures for review of compliance (decision III/2, appendix) with the following text:

> 1. (a) The Committee shall consist of eight Parties.[a] Each of the eight Parties shall appoint a permanent member and should appoint an alternate member of the Committee. To ensure continuity of the Committee's discussions, Parties shall ensure that the members participate in all the Committee's sessions and alternate members only as an exception, when the permanent members cannot participate (see also the Committee's operating rule 4, para. 2). Should the permanent member not be able to participate, he/she shall be responsible for briefing the alternate member and facilitating his/her participation in a Committee's session;

2. Before paragraph 1 (b) insert new subparagraphs (b) and (c) as follows (and renumber the final subparagraph accordingly):

> (b) At their second meeting, the Parties elected four Parties to the Committee for two terms and four Parties for one term. At each session thereafter, the Meeting of the Parties shall elect four new Parties for two terms. Outgoing Parties may be re-elected once, unless in a given case the Meeting of the Parties decides otherwise. Further to the application of the implementation of the compliance procedure of the Convention to the Protocol (decisions V/6–I/6), Parties to the Convention and to the Protocol shall also cooperate with a view to ensuring that the total of the number of Parties elected under the Convention and under the Protocol shall preferably not exceed 12;
>
> (c) The Committee shall elect its own chair and two vice-chairs. The chair and the first vice-chair of the Committee shall also serve as vice-chairs of the Bureau;

3. Replace paragraph 3 with the following paragraph:

> 3. Committee meetings shall be open to other Parties and the public, unless the Committee decides otherwise. Parts of meetings dealing with any matter concerning specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise.

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[a] In accordance with decision V/6–I/6 on the application of the compliance procedure of the Convention to the Protocol on Strategic Environmental Assessment, references in the Committee's structure and functions to the Convention and to the Meeting of the Parties to the Convention shall be understood also as referring to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol. In line with paragraph 2 of that decision, where review of compliance of the Protocol is concerned, the Committee should consist of eight Parties to the Protocol. If the elected members represent Parties to Convention that are not yet Parties to the Protocol, the Parties to the Protocol shall elect the necessary number of additional Parties for Protocol matters, to serve for the same term.

4. Replace paragraphs 9 and 10 with the following paragraphs:

9. At the invitation of the Committee, a Party in respect of which a submission is made or which makes a submission shall be entitled to attend the Committee's session and present to the Committee information and opinions on that submission, but shall not take part in the consideration of the matter, including the preparation and adoption of any report, or of findings and recommendations, of the Committee. The Committee shall decide on the content of any report or findings and recommendations by consensus, send a copy of the draft to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report (see also operating rule 11, para. 2).

10. A member of the Committee that represents a Party in respect of which a submission is made or which makes a submission shall not participate in, or be present during, the consideration by the Committee of that submission or the follow-up to the related decision by the Meeting of the Parties, including the preparation and adoption of any part of the report or findings and recommendations of the Committee relating to that submission (see also operating rule 17 para. 2).

Annex II

Amendments of the operating rules of the Implementation Committee (decision IV/2, annex IV, as amended by decision V/4)

1. In the operating rules of the Implementation Committee (decision IV/2, annex IV, as amended by decision V/4), add the following paragraphs to the end of the preamble:

> Upon the entry of the force of the Protocol on Strategic Environmental Assessment the Meeting of the Parties to the Convention, at its fifth session, and the Meeting of the Parties of the Convention serving as the Meeting of the Parties to the Protocol, at its first session, decided to extend the application of the compliance procedure of the Convention to the Protocol. Therefore, in accordance with decisions V/6–I/6:
>
> (a) The structure and functions of the Committee and its operating rules, as amended in the light of experience gained by the Committee, shall apply, mutatis mutandis, to the Protocol, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol;
>
> (b) References to the Convention and to the Meeting of the Parties to the Convention in the Committee's structure and functions and in the Committee's operating rules shall be understood as referring also to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

2. Replace rule 2 with the following text so as to include an explicit reference to rule 37 of decision I/1 on the rules of procedure:

> The following rules of procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context should apply, mutatis mutandis, to any meeting of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context, except as otherwise provided in the rules set out herein and in the appendix to decision III/2: rule 3 (Place of meetings); rules 12 and 13 (Agenda); rules 20 to 22 (Officers); rules 24 and 25 (c) (Secretariat); rules 28 and 30 to 35 (Conduct of business), except rule 32, paragraph 2; and rules 37 to 46 (Voting).

3. Amend rule 3 to add a new paragraph (b), as follows (and renumber the subsequent subparagraphs):

> (b) "Protocol" means the Protocol on Strategic Environmental Assessment to the Convention, adopted in Kyiv, Ukraine, on 21 May 2003;

4. Replace paragraphs 1 and 2 of rule 4 with the following:

> 1. The Meeting of the Parties shall elect Parties to serve for two terms in the Committee. Each Party elected by the Meeting of the Parties shall appoint a permanent member of the Committee for two terms. Each Party elected by the Meeting of the Parties should also appoint an alternate member for two terms. The term of office of a member shall commence with the appointment by a Party. This paragraph should apply without prejudice to the right of a Party elected by the Meeting of the Parties to appoint in exceptional cases a permanent replacement for the permanent or the alternate member.
>
> 2. Members are expected to participate in every meeting of the Committee. If in exceptional cases the permanent member is unable to participate in a meeting of the

Committee, the alternate member shall participate and the Party shall inform the Chair and the secretariat accordingly well in advance of the meeting. To ensure continuity in the Committee's deliberations, Parties should avoid rotation of permanent members and alternate members in a Party's participation in the Committee meetings. The responsibility for the proper briefing of the alternate member and the facilitation of his/her participation in a meeting rests with the permanent member who cannot participate. If the alternate member is also unable to participate, the respective Party should make every effort to find a suitable replacement of its nominated members for that meeting of the Committee, informing the Chair and the secretariat accordingly well in advance of the meeting.

5. Add new paragraph 4 at the end of rule 4, as follows:

4. Committee members elected for Protocol matters only may participate in the consideration of an issue relating to compliance with the Convention, provided that there is no objection by a Committee member elected for Convention matters. However, a Committee member elected for Protocol matters should not take part in decision-making concerning Convention matters and should not act as curator for an issue relating to compliance with the Convention, but might provide information, opinions and advice. This rule should be applied, mutatis mutandis, in the case of a Committee member elected for Convention matters only, but representing a Party to both the Convention and the Protocol. Further, this rule should be applied without prejudice to paragraphs 10 (entitlement to participate) and 12 (competence) of the structure and functions of the Committee and procedures for review of compliance, and without prejudice to the Committee's operating rules 5 (members), and 18 and 19 (decision-making).

6. In rule 5, replace paragraph 2 with the following:

2. A member that represents a Party in respect of which a submission is made or which makes a submission should not participate in the consideration by the Committee of that submission or the follow-up to a related decision by the Meeting of the Parties, and should not participate in, or be present during, the preparation and adoption of any part of a report, finding or recommendation of the Committee that relates to that submission. This paragraph should be applied, mutatis mutandis, in the case of a Committee initiative.

7. In rule 6, replace paragraph 1 with the following:

1. The Committee should elect a chair and two (first and second) vice-chairs for one term. They should serve in those capacities until their successors are elected. The chair and vice-chairs may be re-elected. If an officer resigns during, or is unable to complete, his or her term of office, the Committee should elect a successor until the end of the term. The Chair and the first Vice-Chair of the Committee shall also serve as Vice-Chairs of the Bureau, unless the Meetings of the Parties decide otherwise.

8. In rule 11, replace paragraph 2 with the following and add a new paragraph 3 (renumbering subsequent paragraphs):

2. When it is known that the Committee will discuss the matter of any submission at a particular meeting, the secretariat should notify the Parties involved that the matter will be discussed as well as of their right to present to the Committee information and opinions on the matter under consideration.

3. The Committee should not begin to prepare or adopt any finding or recommendation that relates to a submission before the Party in respect of which a

submission is made or which makes a submission, at the invitation of the Committee, presents their views on the submission before the Committee.

9. At the end of rule 11, add new paragraphs 5, 6 and 7, as follows:

5. Information presented to the Committee should be as concise and concrete as possible. Parties should avoid including information that is not strictly necessary to establish the existence and nature of the alleged non-compliance or to respond to the allegations or to the Committee's requests for additional information. If the information is inevitably lengthy due to the complexity of the matter and the volume of the related information, it is recommended that Parties include a three-page (maximum) summary with the main facts and/or arguments of their position.

6. Parties are requested to submit any information to the Committee through the secretariat. The information should be submitted in electronic form, and as relevant, by sending original copies subsequently by post.

7. The information should consist of original documents and their English translation. The Committee may choose not to consider documentation referred to by the Parties via web links.

10. In rule 12, replace paragraph 2 (e) with the following:

(e) In circumstances of persistent non-compliance since the previous Meeting of the Parties, a recommendation to the Meeting of the Parties to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention and the Protocol, including the possibility to appoint a member to the Implementation Committee.

11. In rule 17, replace paragraph 2 with the following:

2. A Party in respect of which a submission is made or which makes a submission shall not participate in, or be present during, the consideration by the Committee of that submission, including the preparation and adoption of any part of the findings or recommendations of the Committee relating to that submission (see also para. 10 of the Committee's structure and functions).

12. Replace rule 19 with the following:

In between meetings, electronic means of communication might be used by the members for the purpose of decision-making and of conducting informal consultations on issues under consideration. Decisions can only be taken by electronic means of communication if all members participate in decision-making by submitting to the Chair and the secretariat their vote or abstention within the deadline set by the secretariat in consultation with the Chair, or by not replying at all within 10 days to the Chair's request for decision-making by electronic means of communication. Any decisions taken by electronic means of communication should be reflected in the report of the meeting of the Committee that follows the taking of the decision.